

ISSUE DATE: April 24, 1998

DOCKET NO. E-104/CI-98-73

ORDER FINDING JURISDICTION, AFFIRMING ELIGIBILITY DETERMINATION, AND
DENYING PETITION

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Edward A. Garvey
Joel Jacobs
Marshall Johnson
LeRoy Koppendrayer
Gregory Scott

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Petition of Frost Benco
Wells Electric Cooperative, Inc. Regarding the
Application of the Cold Weather Rule

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PROCEDURAL HISTORY

On October 23, 1997 David and Rita Michels (complainants) filed a complaint with this Commission stating that Frost Benco Wells Electric Cooperative, Inc. (Frost Benco or the co-op) had refused to reinstate their disconnected electric service at the beginning of the cold weather season as required under the Commission's Cold Weather Rules, Minn. Rules, parts 7820.1500-7820.2300. The Commission notified Frost Benco that complainants should be permitted to apply for reconnection under the rules, and Frost Benco complied under protest.

On November 18, 1997 Frost Benco denied the Michelses' request for reconnection. Complainants appealed, and the co-op reinstated service pending conclusion of the appeal. On December 19, 1997 the Commission determined complainants were entitled to reconnection under the Cold Weather Rules.

On January 5, 1998 the co-op filed a petition appealing that determination on two grounds: (1) the Commission lacked jurisdiction to apply the Cold Weather Rules to cooperatives; and (2) the decision reinstating service to the Michels household was erroneous and not based on complete and proper information.

On February 13, 1998 Mr. and Mrs. Michels, by their attorney, filed comments arguing that the Commission did have Cold Weather Rule jurisdiction over cooperatives and that the decision reinstating service to the Michels household was based on proper and complete information.

On February 17, 1998 Mr. and Mrs. Michels filed comments on their own behalf supporting the Commission's decision.

On April 9, 1998 the matter came before the Commission.

FINDINGS AND CONCLUSIONS

I. Positions of the Parties

A. Frost Benco

Frost Benco claimed that cooperatives were not subject to the Commission's Cold Weather Rules for three reasons:

(1) under Minn. Stat. § 216B.02, subd. 4 cooperatives are exempt from regulation except when the Public Utilities Act specifically subjects them to regulation;

(2) the statute dealing with cooperatives' rights to disconnect customers during the cold weather months¹ does not specifically mention Commission authority over such disconnections;

(3) the statute giving the Commission authority over co-ops' "service standards and practices"² does not apply, because disconnection and reinstatement policies are not service standards or practices.

Finally, the cooperative challenged the Commission's determination that the Michels household met the income eligibility requirements of the Cold Weather Rules, claiming that the determination was not based on proper and complete information.

B. Rita and David Michels

Mr. and Mrs. Michels claimed the Commission had authority over the cold weather disconnection policies of cooperatives, citing Taylor v. Beltrami Electric Cooperative, Inc., 319 N.W.2d 52 (Minn. 1982). They argued that finding otherwise would violate the Public Utilities Act and the state and federal constitutions.

They argued that their income met Cold Weather Rule guidelines and had been properly calculated and documented by Commission staff.

¹Minn. Stat. § 216B.097.

²Minn. Stat. § 216B.17, subd. 6a.

II. Statutes and Rules at Issue

There are two statutes dealing with utility disconnections during the cold weather months — Minn. Stat. § 216B.095, directing the Commission to expand its existing rules on cold weather disconnections, and Minn. Stat. § 216B.097, setting substantive standards for cold weather disconnections by electric co-ops.

Neither statute specifically subjects co-ops to the Commission’s Cold Weather Rules. Another statute, however, subjects co-ops to Commission jurisdiction over their “service standards and practices” on the Commission’s own motion or upon the filing of a complaint.³ The Cold Weather Rules subject co-ops to their provisions when a complaint is filed against them under that statute.⁴

III. Commission Action

A. The Jurisdictional Issue

The fact that the statute governing cold weather disconnections by co-ops fails to mention the Commission’s Cold Weather Rules does not defeat Commission jurisdiction. Under § 216B.17, subd. 6a the Commission has complaint and “own motion” jurisdiction over co-ops’ service standards and practices. The Cold Weather Rules provide that when such complaints are filed on cold weather disconnection issues, the Commission will apply and enforce the provisions of the Cold Weather Rules.⁵

The Cold Weather Rules limit the authority of a utility to disconnect a customer. Minn. Rules, part 7820.1800. The rules expressly provide that, “Utility also means a cooperative electric association when a complaint is filed under Minnesota Statutes, section 216B.17, subdivision 6a.” Minn. Rules, part 7820.1600, subp. 6a.

No one disputes that a complaint has been filed under § 216B.17 challenging the co-op’s initial refusal to reinstate service to Mr. and Mrs. Michels. This complaint triggers Commission jurisdiction over the co-op’s cold weather disconnection and reinstatement standards and practices, which in turn triggers the application of the Cold Weather Rules. The Commission rejects the contention that § 216B.097’s failure to reference Commission authority overrides § 216B.17’s clear grant of authority.

The Commission also rejects the co-op’s claim that the Cold Weather Rules exceed the Commission’s authority because cold weather disconnection and reinstatement policies are not “service standards or practices” under § 216B.17, subd. 6a. The Commission believes that the terms and conditions under which service will be disconnected or withheld fall within the literal

³Minn. Stat. § 216B.17, subd. 6a.

⁴Minn. Rules, part 7820.1600, subp. 6a.

⁵Minn. Rules, part 7820.1600, subp. 6a.

and commonsense meaning of “service standards and practices.”

They are also precisely the kinds of issues the Legislature meant to preserve for Commission review under § 216B.17, subd. 6a. As the Supreme Court explained in Taylor v. Beltrami Electric Cooperative, Inc., 319 N.W.2d 52 (Minn. 1982), “The legislative history indicates that the 1978 amendments [exempting co-ops from much of the Public Utilities Act] were intended to reduce unnecessary bureaucracy in rate-setting by cooperatives.” Beltrami at 55, footnote omitted. This interpretation is supported not only by the legislative history, but by the structure of the Act itself.

Despite broad exclusionary language in the definitional section, the Public Utilities Act goes on to require the regulation of co-ops in a host of non-ratemaking areas. Examples in addition to service standards and practices include assigned service areas, integrated resource planning, cogeneration and small power production, certificates of need, energy conservation improvements, and stray voltage-related issues.⁶

For all these reasons, the Commission concludes that it has jurisdiction over this dispute and the authority to require the co-op to follow the Cold Weather Rules in its dealings with the Michels household.

B. The Income Eligibility Issue

The co-op claimed the determination that the Michelses were income-eligible for Cold Weather Rule protection was erroneous and not based on proper and complete information. The Commission disagrees.

The Michels household was found eligible for reconnection under Minn. Rules, part 7820.2300. That rule permits the reconnection of households with incomes below 185% of the federal poverty level if they enter into payment plans allocating 10% of their income to past and present utility bills.

The rule requires applicants to document their income. Minn. Rules, part 7820.2000 specifies eight forms of acceptable documentation; the Michelses provided four of the eight — a letter verifying income and receipt of public assistance from the local energy assistance provider, the household’s most recent tax return, paycheck stubs for the two months preceding the application, and an employer’s letter verifying earnings.

The Commission concludes that the complainants properly documented their income, that their income fell within the eligibility criteria of the rule, that the eligibility determination was correct, and that the eligibility determination was based on proper and complete information.

C. Conclusion

⁶Minn. Stat. § 216B.38, subd. 5; Minn. Stat. § 216B.2422, subd. 1 (b); Minn. Stat. § 216B.164, subd. 2; Minn. Stat. § 216B.243; Minn. Stat. § 216B.241, subd. 1b; Minn. Stat. § 216B.09, subd. 2.

For the reasons set forth above, the Commission finds that it has jurisdiction over this dispute between Frost Benco and the Michels household, that the Cold Weather Rules apply to this dispute, that the determination to require reinstatement of service was correct, and that the determination to require reinstatement of service was based on proper and complete information.

For all these reasons, the Commission will deny the co-op's petition and the relief it requests.

ORDER

1. The Commission hereby denies the petition of Frost Benco Wells Electric Cooperative seeking to set aside the determination that David and Rita Michels are entitled to reconnection under the Commission's Cold Weather Rules.
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

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